

# Federal Emergency Management Agency

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MEMORANDUM FOR: Regional Directors, Regions I-X  
Federal Coordinating Officers

ATTENTION: Response and Recovery Division Directors  
Mitigation Division Directors

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SUBJECT: Eligibility of Assistance to Building and Land-Use  
Departments following a Disaster

The purpose of this memorandum is to define what types of assistance can be given to local building and land-use departments following a disaster and the authority under the Stafford Act for providing this assistance. The term “building department” is used throughout this memorandum to refer to organizational elements that are responsible for enforcement of local building, zoning, and land-use laws, including the National Flood Insurance Program. This policy should be used for determining eligible assistance for all disasters declared after the date of this memorandum. For existing disasters this policy can be used to provide additional assistance under the HMGP program, but should not be used to deny assistance that has already been given to communities.

**Section 403 of the Stafford Act.** Work authorized by Section 403 must be necessary to address an immediate threat to lives, public health and safety, or improved property. Therefore, inspections of structures to determine if there is a threat to individuals or to other improved property are the only ones eligible under this section.

**Activities authorized under Section 403:**

- Provide grants and/or direct assistance to a state or community to inspect and post buildings to ensure safe occupancy and perform other enforcement activities on damaged buildings to ensure public health and safety.

**Activities NOT authorized under Section 403:**

- Provide grants and/or direct assistance to a state or community to perform building department functions associated with repair/reconstruction activities, such as plan review, building inspections, and to perform substantial damage determinations under the National Flood Insurance Program. (See authorized activities under Section 404.)

**Section 402 of the Stafford Act.** Authority exists, under Section 402 of the Stafford Act, for FEMA to provide technical assistance (100% federal share) to building and land-use departments during reconstruction.

**Activities authorized under Section 402:**

- Provide technical assistance (to evaluate state and local building codes to determine if effective codes have been adopted).
- Provide technical assistance to evaluate the organization of a building department to determine if the building department can effectively manage an increased workload directly resulting from the disaster.
- Provide technical assistance to the local community on how to perform damage assessments, including substantial damage determinations under the National Flood Insurance Program.
- Provide technical assistance to support the collection data on damaged buildings and other facilities. This includes gathering data on substantially damaged buildings.

**Activities NOT authorized under Section 402:**

- Provide direct federal assistance to a state or community to perform building department functions associated with repair/reconstruction activities, such as plan review, building inspections, and to perform substantial damage determinations under the National Flood Insurance Program. (See authorized activities under Section 404.)
- Provide grants for any purpose.

**Section 404 of the Stafford Act.** Direct grants to a community for performing building department functions can be made as a Hazard Mitigation Grant under Section 404 of the Stafford Act. When there is considerable damage to buildings, building department inspections should be explicitly addressed in the FEMA-State agreement and in the Hazard Mitigation Plan required under Section 409. The purpose of this assistance is to ensure that buildings are repaired or rebuilt in a manner that reduces future disaster damages.

**Activities authorized under Section 404:**

- Provide grants to a state or community to perform building department functions associated with repair/reconstruction activities, such as plan review, building inspections, and to perform substantial damage determinations under the National Flood Insurance Program. (See authorized activities under Section 404.)

**Activities NOT authorized under Section 404:**

- Provide direct federal assistance for any purpose.

The Deputy Federal Coordinating Officer for Mitigation or the Mitigation Officer is responsible to determine when technical assistance under Section 402 is appropriate to help a local building department.

Neither an in depth NEPA review (this activity is included in FEMA's categorical exclusions) nor a benefit-cost analysis needs to be performed to approve a Hazard Mitigation Grant Project to assist building departments. Section 409 of the Stafford Act (which does not provide funding) requires that the recipient of a disaster loan or grant must agree to evaluate the natural hazards in the area and take appropriate actions to mitigate the hazards including proper land-use, design and construction practices. The Stafford Act clearly intends that the actions described under Section 409 can be funded under Section 404 when these actions can be clearly linked to reduced disaster losses in the future. For this reason a benefit-cost analysis does not need to be performed when a community seeks assistance in adopting and enforcing proper land-use, design and construction practices following a disaster.

The attached interim guidance prepared by the Mitigation Directorate describes when it is appropriate to provide this assistance and the limits and conditions that should be placed on this assistance. Your comments of this interim guidance are requested.

Questions can be addressed to Robert F. Shea, Jr., Division Director, Program Implementation Division, at (202) 646-3619 or Paul Tertell, Senior Engineer, Program Development Branch, at (202) 646-3935.

## **Interim Guidance for Determining Eligible Costs in Assisting Local Building, Zoning, and Land-use Departments Following a Presidentially Declared Disaster**

**Purpose:** Under specific conditions, FEMA can help a community meet extraordinary needs associated with enforcing local building codes during post-disaster reconstruction. This guidance discusses these conditions. Assistance can also be provided to meet emergency inspection needs, such as life-safety and habitability inspections of buildings. Addressing emergency needs is outside the scope of this guidance. The term “building department” is used throughout this guide to refer to organizational elements that are responsible for enforcement of local building, zoning, or land-use laws and ordinances.

### **Conditions for Approval of a HMGP Grant**

A community that has an effective, well-organized building department, and has adopted an appropriate building code, will have future disaster damages lessened. If the building department takes the following steps, the HMGP grant is expected to be effective in reducing future disaster damages.

Condition 1. The existing building code and/or zoning and land-use management regulations (including the community’s NFIP floodplain management ordinance) must be assessed to determine if they adequately address the identified natural hazard risks in the community. This technical assistance may be provided under Section 402 of the Stafford Act and completely (100%) funded as a federal cost. This assessment can usually be accomplished by determining if the community has adopted one of the three model building codes found in the United States and has a floodplain management ordinance that meets the minimum requirements of the NFIP. In addition, some states have state model or state mandated building codes that are closely based on one of the model building codes as well as model or mandatory floodplain management requirements.

Condition 2. The building department must be evaluated to determine that the organization of the department, the funding of the department, and the enforcement and inspection processes are sufficient to ensure proper enforcement of all applicable laws and ordinances. This technical assistance may be provided under Section 402 of the Stafford Act and completely (100%) funded as a federal cost.

Condition 3. The local community must agree to address any deficiencies identified in this evaluation as a condition of receiving a HMGP grant for a building department. Local officials with the authority to enter into legally binding agreements should agree in writing to address the deficiencies identified in the assessment. This agreement can be a simple statement, attached to the evaluation, which states the local official’s authority and that they agree to implement the recommendations contained in the evaluation. This agreement should include an implementation schedule that is mutually satisfactory to FEMA, the State, and the community. The agreement should include an acknowledgement by the community that failure to meet the agreed upon implementation

schedule can result in the loss of all current and/or future building department assistance used to support post-disaster operations.

Ways to Meet Conditions 1 and 2. Conducting a building code and building department assessment can be accomplished using various mechanisms. It is important to note that any assessment should include an assessment of the community's compliance with the NFIP. Some suggested approaches include (but are not limited to):

- (1) Deploying FEMA PFT, DTE, or SDATE Mitigation Staff that are knowledgeable of building codes and proper building department administration. Former local building officials can often provide the requisite knowledge.
- (2) Entering into a contractual agreement with a state or regional government entity that is well versed in building codes and proper administration of a building department. As an example, many states have state-level building departments and code administrators.
- (3) Employing a mutual aid agreement among communities to use other local building officials.
- (4) Entering into a contractual agreement with one of three model building code organizations. All three model building code organizations have established programs for conducting similar assessments of building departments.
- (5) Employing the Hazard Mitigation Technical Assistance Program.

Determining Eligible Costs for the HMGP Grant. The extraordinary cost of providing assistance may be eligible as a Hazard Mitigation Project under Section 404 of the Stafford Act at a 75% Federal / 25% State/local cost-share. Assistance may be provided for conducting code compliance inspections and plan review and for ensuring compliance with minimum NFIP floodplain management requirements. The period of assistance shall only be for an identified period in which there is an extraordinary need caused by the disaster and shall not exceed 6 months from the closure of the incident period. The extraordinary costs should be estimated before the grant is awarded and should include a description of an approved scope of the grant that includes expected staffing levels, equipment purchases, office rental and similar expenses. If, after 6 months, the community requests additional assistance, a new needs assessment must be conducted to determine if assistance provided to date has been effectively used and to determine if additional assistance is warranted. It is anticipated that assistance beyond 6 months will only be granted in extremely rare instances.

Extraordinary costs can be calculated as follows. Extraordinary costs are the costs of the department in meeting disaster reconstruction needs after normal costs of the department are deducted.

Normal costs can be determined from a monthly average of payroll and office expenses during the most recent 12-month period that does not include Federal, State, or local disaster declarations.

Disaster costs can be determined by the payroll and office expense during the period of assistance. If the applicant must purchase new equipment, only the equivalent rental cost of this equipment for the period of assistance is considered a disaster cost. The revenues generated by fees for inspections or permits, whether collected or not, must be deducted since this is not an extraordinary cost.

Extraordinary costs = Disaster costs – Normal Costs – Cost of fee waivers

If a community has already received federal assistance for meeting emergency building inspection needs (to post buildings, determine habitability, etc); these costs must be deducted in determining extraordinary costs.